

REMARKS

By the above amendments claims 1, 6, 7, 10 and 15 have been amended and claims 4, 5, 14 and 17 have been cancelled. Thus, claims 1-3, 6-13, 15, 16 and 18-24 are in the application. Claims 3, 12 and 19-22 stand withdrawn from consideration as being directed to non-elected species.

Claims 1, 2, 4-11, 13-18, 23 and 24 were rejected in the outstanding Office Action under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-51 of U.S. Patent No. 6,562,075 as stated on pages 3 and 4 of the Office Action. These same claims were provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims in commonly owned, co-pending U.S. application serial nos. 10/263,795; 10/408,107; 10/473,680; and 10/814,260, as set forth on page 4 of the Office Action.

Responsive to the obviousness-type double patenting rejection and the provisional rejection based on obviousness-type double patenting, enclosed herewith is a Terminal Disclaimer wherein Applicants disclaim the term of any patent to be issued on the above-identified application subsequent to the expiration date of the full statutory term of U.S. Patent No. 6,562,075 and the full statutory term of any patent to be issued on the referenced, commonly owned, co-pending applications. In view of the submission of the Terminal Disclaimer, reconsideration and withdrawal of the double patenting rejections is requested.

Claims 1, 2, 4-9 and 23 were rejected in the Office Action under 35 U.S.C. §112, second paragraph, as being indefinite because allegedly the limitation "the lower portion of the shank" in line 7 of claim 1 lacks antecedent

basis. Responsive to this rejection, by the above amendments claim 1 has been amended to positively recite the lower portion thereby providing antecedent basis for the expression "the lower portion" in line 7 of the claim. In view of this change, it is respectfully submitted that the claims as amended are proper under 35 U.S.C. §112, second paragraph. Accordingly, reconsideration and withdrawal of the rejection is requested.

Claims 1, 2, 4-11, 13-18, 23 and 24 were rejected in the Office Action under 35 U.S.C. §102(b) as allegedly being clearly anticipated by Atkinson et al., U.S. Pub. No. 2002/0087216 A1 as set forth on page 5 of the Office Action. This rejection is hereby traversed and reconsideration thereof is respectfully requested in view of the above amendments to the claims and Applicants' remarks set forth below.

The present invention is directed to a prosthetic foot and prosthesis affording a high performance with improved dynamic response capabilities as these capabilities relate to applied force mechanics. As discussed in the application specification with respect to Figures 1 and 2, the prosthetic foot of the invention utilizes the convexly curved surfaces of the calf shank and foot keel in creating both improved horizontal linear velocity and dynamic response of the prosthesis. The relatively larger radii of curvature of the proximal terminal end of the shank and the smaller radius of curvature at the lower end of the shank, for quicker response characteristics contribute to this improved performance as discussed in the specification.

As recited in claim 1 as amended, the prosthetic foot comprises a longitudinally extending foot keel and a resilient, monolithically formed shank extending upwardly from the foot keel, by way of an anterior facing continuous

convexly curved surface with increasing radius of curvature, to form a lower ankle joint area portion and an upper resilient shank portion for connection with a lower extremity prosthetic structure secured to a person's residual limb. The lower portion and the upper portion of the shank extending upwardly from the foot keel are anterior facing convexly curved. The shank and at least the portion of the foot keel are monolithically formed.

The cited published application of Atkinson et al. does not disclose or suggest the prosthetic foot of the present invention as recited in claim 1 as amended. Atkinson et al. actually teach away from the present invention by their use of a straight pylon or shank connected to a generally c-shaped ankle. The ankle has a weakened portion, 41 in Figure 3, in the middle of the c-shape to permit vertical flexing of the ankle. The Atkinson et al. prosthesis is similar to that in the patent to Martin et al., U.S. Patent No. 5,897,594, referred to in the background art section of Applicants' specification. Martin et al. also disclose the use of an approximately c-shaped insert or ankle. The drawbacks of such an arrangement are referred to in the application specification.

Similar changes to those made in claim 1 by the above amendments have been made in independent claim 10 as amended. The prosthesis of claim 10 is now recited as comprising a foot; an ankle; an elongated, upstanding shank above the ankle; wherein the ankle, shank and at least the portion of the foot are monolithically formed as a resilient member for improving the dynamic response of the prosthesis, the resilient member including a lower portion and an upper portion which are anterior facing convexly curved, said upper portion including an upper terminal portion which

is anterior facing convexly curved. Again, such features are not disclosed or suggested by Atkinson et al.

In view of the above amendments and remarks, it is respectfully submitted that the application claims as amended patentably define over Atkinson et al. Accordingly, reconsideration and allowance of the claims as amended is requested.

Please charge any shortage in the fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 01-2135 (Case No. 183.39735PA7) and please credit any excess fees to such deposit account.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ronald J. Shore", is written over a horizontal line.

Ronald J. Shore
Registration No. 28,577
ANTONELLI, TERRY, STOUT & KRAUS, LLP

RJS/kmh

Attachments